Sentul Murni Sdn Bhd v Ahmad Amirudin bin Kamarudin & Ors

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-02-593 OF 1998
SHAIK DAUD, SITI NORMA YAAKOB AND DENIS ONG JJCA
21 AUGUST 2000

Land Law *— Licence — Recovery of land — Continuous occupation of land known to or acquiesced/encouraged by state authority and/or local authority— Whether squatters simpliciter or licensees coupled equity*

The appellant was the registered owner of a piece of land ('the land'). The appellant filed a claim against the respondents claiming that they were trespassers and prayed for vacant possession. The respondents denied that they were trespassers and contended that they were the lawful occupants of the land as licensees coupled equity and that the appellant knew or ought to have known of the equity. They also contended that their continuous occupation of the land was known to or acquiesced/encouraged by the state authority and/or Dewan Bandaraya Kuala Lumpur, the predecessors of the appellant. The trial judge found on the facts before him that the respondents were not squatters simpliciter but were in occupation of the land as licensees and with the consent of the state authority that they could occupy or continue to occupy the land. The appellant appealed.

Held, dismissing the appeal:

On perusal of the records of appeal and after considering the submissions of both counsel, the court was unable to disagree with the findings of the judge. There was ample evidence before him to arrive at those conclusions. On the evidence before the judge, he rightly came to the conclusion as he did and the court had no reason to disagree (see p 505D–E).

[Bahasa Malaysia summary

Perayu adalah pemilik berdaftar sekeping tanah ('tanah tersebut'). Perayu telah memfailkan satu tuntutan terhadap responden-responden mendakwa bahawa mereka adalah penceroboh dan memohon milikan kosong. Responden-responden menafikan bahawa mereka adalah penceroboh dan menegaskan bahawa mereka adalah pemilik sah tanah tersebut sebagai pemegang lesen beserta ekuiti dan bahawa perayu mengetahui atau sepatutnya mengetahui mengenai ekuiti tersebut. Mereka juga menegaskan bahawa pendudukan mereka yang berterusan atas tanah tersebut diketahui atau dibenarkan/digalakkan oleh pihak berkuasa negeri dan/atau Dewan Bandaraya Kuala Lumpur, pendulu perayu. Hakim perbicaraan mendapati berdasarkan fakta-fakta yang dikemukakan bahawa responden-responden bukan penduduk setinggan *simpliciter* tetapi

menduduki tanah tersebut sebagai pemegang lesen dan dengan kebenaran pihak berkuasa negeri mereka boleh menduduki atau terus menduduki atas tanah tersebut. Perayu telah membuat rayuan.

Diputuskan, menolak rayuan tersebut:

Setelah meneliti rekod rayuan dan setelah mempertimbangkan hujah-hujah kedua-dua peguam, mahkamah tidak ada apa-apa yang tidak dipersetujui mengenai penemuan hakim tersebut. Keterangan mencukupi telah dikemukakan untuk tiba kepada kesimpulan-kesimpulan tersebut. Berdasarkan keterangan yang dikemukakan kepada hakim, beliau telah tiba kepada kesimpulan-kesimpulan tersebut dengan betul sebagai mana sepatutnya dan mahkamah tidak mempunyai sebab untuk tidak bersetuju (lihat ms 505D–E).]

Notes

For cases on licence generally, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 2299–2312.

Cases referred to

Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor [1991] 1 MLJ 343 (refd)

Lebbey Sdn Bhd v Chong Wooi Leong & Anor and other applications [1998] 5 MLJ 368 (refd)

Legislation referred to

National Land Code 1965

Appeal from: Civil Suit No S2–22–157 of 1996 (High Court, Kuala Lumpur)

G Gunaseelan (*T Gunaseelan* and *K Balaguru* with him) (*G Gunaseelan & Associates*) for the appellant.

Tun Salleh bin Abbas (*Sivarasa Rasiah* and *Kamarul Hisham* with him) (*Daim & Germany*) for the respondents.

Shaik Daud JCA (delivering judgment of the court): The appellant is the registered owner of land known as HS(D) 66601 PT 2473 Mukim Setapak, Wilayah Persekutuan which consists of 487,533 square feet of land ('the land'). The land was registered in the appellant's name on 6 July 1990. At that material time all the four respondents and a number of others were living on the land. The appellant purchased the land from one STLR Sdn Bhd who became the owner of the land on 26 October 1985. Prior to that date the land belonged to the government.

As the registered owner, the appellant filed a claim against the four respondents claiming that they were trespassers and prayed for vacant possession, mesne profits from 11 October 1993, until delivery of vacant possession, damages for trespass, interest and costs.

A The respondents denied that they were trespassers. They contended that they were the lawful occupants of the land as licensees coupled with equity and that the appellant knew or ought to have known of the equity. They also contend that their continuous occupation of the land was known to or expressly and/or impliedly acquiesced and/or encouraged by the state authority and/or Dewan Bandaraya Kuala Lumpur ('DBKL'), the B predecessors of the appellant.

After a full and lengthy trial in which the learned judge traced the history of the land, he came to the conclusion that on the facts before him, he was satisfied that the respondents were not squatters simpliciter but were in occupation of the land as licensees and with the consent of the state C authority that they could occupy or continue to occupy the land. In the light of that finding the learned judge gave vacant possession to the appellant subject to the appellant compensating the four respondents for all costs incurred in the construction and renovation of their respective houses, or alternatively the costs of the present value of the houses to be assessed by an independent valuer to be mutually agreed to by the parties or if they fail to D agree, to be appointed by the court, and all costs incidental to relocating the respondents. The learned judge also rejected the appellant's claim for special damages on the ground that they have not been sufficiently proved.

On our perusal of the records of appeal and after considering the submissions of both learned counsel, we find ourselves unable to disagree E with the findings of the learned judge. There were ample evidence before the learned judge to arrive at those conclusions.

The central issue before the court was the status of the respondents as far as the land is concerned. The appellant contended all along that the respondents were squatters simpliciter and therefore they were trespassers F on the land. The respondents on the other hand, are not claiming any title to the land. That the appellant is the registered owner of the land is undisputed. The respondents while conceding that the appellant is now the registered owner, are contending that they are not squatters simpliciter but they occupied the land with a licence in equity.

G The land appeared to have a chequered history. Initially the land was a Malay Reserve Land but such status was cancelled. Based on the evidence of a land surveyor, one Seah Kok Seang @ Sheah Si Ba, who testified as an expert witness, the learned judge accepted his expert testimony that the malay reservation status was de-gazetted by Gazette Notification No 4851/ 1932 dated 22 June 1932. This was confirmed in a letter from the Director H of Land and Mines dated 9 February 1996. The respondents contend that when the appellant became the registered owner of the land, it knew or ought to have known of the equity which had existed long before it became the owner. The respondents also contended that their continuous occupation of the land was known to or expressly or impliedly acquiesced and/or encouraged by the state authority or by DBKL. It is also in evidence I that between 1960 and 1990 various amenities were provided for by the authorities such as a town hall, three mosques, water and electricity supply, telephone services, a clinic and the roads were paved. DBKL built a second

town hall and a building to conduct women's development activities and a number of religious schools. The respondents also led evidence to show that this village, called Kampung Chubadak was self-governed and self-administered. There was also evidence that prior to the formation of the Wilayah Persekutuan, the Selangor state government formed a body known as Jawatankuasa Kemajuan dan Keselamatan Kampung ('JKKK') in this village which was headed by the Ketua Kampung. When Wilayah Persekutuan was established on 1 February 1970, the JKKK was replaced by DBKL officials and the post of Ketua Kampung was abolished. In 1987, however, this post was revived and the Ministry of Wilayah Persekutuan appointed the former Ketua Kampung to administer this village. In the 1960s, the Kuala Lumpur District Officer prepared a layout plan for the former mining land at which Kampung Chubadak Tambahan and Kampung Puah Seberang are situated, the object of which was to sub-divide the land into various lots which would be allocated to the then residents occupying the land. It is the contention of the respondents that between 1960 and 1990, many dignitaries made official visits to this village and they included politicians and royalties. In fact during the official launch of the Klinik Kesihatan Kanak-Kanak dan Ibu in Kampung Chubadak Tambahan, the then Menteri Besar, Dato' Harun Idris, promised that the Selangor state government would take certain measures to enable the residents of the village and an adjoining village to obtain ownership of the land they occupied. This, the learned judge found, was not a mere political gimmick but was based on a decision of the then Selangor State Executive Council. It was contended that the Menteri Besar had no authority to bind the state authority and his promise is insufficient. The judge was mindful of the case of *Lebbey Sdn Bhd v Chong Wooi Leong & Anor and other applications* [1998] 5 MLJ 368, where it was held that 'State Authority' under the National Land Code is defined for the purpose of Selangor as the Ruler, but in the present case the then Menteri Besar was in fact conveying the decision of the State Executive Council and for all practical purposes the Ruler must act on the advice and recommendation of the State Executive Council. In 1974 the then Menteri Besar also informed the residents that the state government was going to issue separate titles to the settlers. He also referred to the minutes of a meeting dated 9 December 1976, which indicated that there was approval given by the State Executive Committee of Selangor on 9 August 1962, to alienate the land to the Malay occupants residing on the land. After the formation of the Wilayah Persekutuan in 1974 and on 10 January 1976, the Land Executive Committee of Wilayah Persekutuan, which is the equivalent of the State Commissioners for Lands and Mines in other states, expressly agreed that the approval of the Selangor State Executive Committee be carried out by the Collector of Land Revenue of Wilayah Persekutuan. There was no evidence that the Land Executive Committee of Wilayah Persekutuan had changed or revoked its policy in relation to the occupation of the Malay residents of Kampung Chubadak. All these remained unchallenged.

A B C D E F G H I

Having traced the history of the land and as to how and when each of the respondents came to be on the land, and considering the Federal Court

A decision in *Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor* [1991] 1 MLJ 343, the learned judge came to the conclusion that the respondents were not squatters simpliciter, as the appellant was trying to make them out to be. He found there was consent and licence from the state authority that the respondents can occupy or continue to occupy the land. The respondents also established that based on the state authority's
B acquiescence, encouragement and approval, they expended money and labour to improve and further develop the land in Kampung Chubadak Tambahan, which was a former mining land. All these were known to the predecessors of the appellant.

Therefore, on the evidence before the learned judge, he rightly came to
C the conclusion as he did and we have no reason to disagree. We dismissed the appeal with costs and confirmed the findings and orders of the learned judge and also ordered that the deposit be paid out to the respondents to account of their taxed costs.

Appeal dismissed.

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Reported by Jafisah Jaafar

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